

The Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act may be found at 86 Ill. Adm. Code 130.415. (This is a GIL.)

May 23, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 17, 2006, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I would like a Department Ruling on the following issue.

We are an Illinois Corporation in the business of manufacturing transit mixed concrete. We use Kwik Sand to clean our trucks. The copy of the enclosed invoice is for four (4) drums of acid.

We pay sales tax on the Kwik Sand but I disagree with paying sales tax on the freight. ABC states that we must pay sales tax on freight. Therefore, I am asking for an official ruling on whether the freight line item on the invoice is taxable or non taxable.

If you need more information please call me at the above telephone number. Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

For information regarding the Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act please see 86 Ill. Adm. Code 130.415. The taxation of transportation and delivery charges, also designated as shipping and handling charges, are not dependent not upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of

the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

As noted in subsection (d) of Section 130.415, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

We cannot tell from the invoice you have provided whether the transportation charges (freight) have been separately contracted for or not under the guidelines of Section 130.415. The documentation enclosed with your letter from your supplier states that it is undergoing a sales and use tax audit for the period covered by your purchase and requests payment of tax on the total purchase price of the product, including freight amounts. You may wish to contact your supplier to inquire as to whether the Department's auditors have reviewed this transaction. The Department's auditors are in the best position to examine all of the relevant information and documentation regarding a transaction that may be part of an audit rather than the Legal Services Office.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk